

Cunningham

146254



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Paragon Van Lines, Inc.

File: B-246735

Date: March 30, 1992

Michael E. Coccozza for the protester.
Captain Gerald P. Kohns, Esq., Department of the Army, for
the agency.
James M. Cunningham, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Invitation for bids (IFB) for packing, crating, storage,
and movement of household goods was not ambiguous con-
cerning basis on which "drayage" (hauling) would be paid
to contractor where, although IFB included two different
definitions of "drayage" in separate sections, a "NOTE"
added to the bidding schedule by amendment reasonably
provided that the definition of drayage contained in the
statement of work would control.

DECISION

Paragon Van Lines, Inc. protests the terms of invitation for
bids (IFB) No. DABT35-91-B-0069, issued by the Department of
the Army, Fort Dix, New Jersey, on September 30, 1991, for
the packing, crating, storage, and movement of household
goods at Fort Dix and McGuire Air Force Base, New Jersey,
for the period from January 1, 1992 (or date of award, if
later), through December 31, 1992. Paragon contends that
the meaning of the phrase "drayage [hauling] included" as
used in the IFB is ambiguous.

We deny the protest.

Item No. 0004 (complete service-outbound (unaccompanied
baggage)) of the IFB calls for "packaging, inventorying,
packing in Government-approved containers, weighing,
strapping, obliteration of old markings, marking, and
loading shipments on the line-haul carriers equipment"
at the owner's residence (except when ordered by the
contracting officer to be performed at the contractor's
facility). This item provides estimates of the number

of contractor-furnished containers to be used for the service and contains spaces for bidders to insert the transportation charge for either on a "drayage included" (Item No. 0004(B)(1)) or "drayage not included" (Item No. 0004(B)(2)) basis. As to what was meant by the term "drayage included," the IFB, as initially issued, contained conflicting definitions. On the one hand, paragraph 2.7 of page p-5 of the IFB's work statement provided that the term "drayage included" applied only when a shipment required movement by the contractor to an air, water, or other terminal for on-ward movement (after completion of the shipment preparation) but did not apply when a shipment was to be merely moved from a residence, or other pickup point, to the contractor's warehouse for onward movement by another freight-forwarder. However, paragraph I-80 of the IFB incorporated Defense Acquisition Regulation Supplement (DFARS) § 252.247-7113 (1988 ed.), which provided that drayage under the contract was to include all outbound hauling of "containerized shipments," and thereby specifically included hauling of a shipment to a "contractor's storage warehouse."

The Army's contracting officer states that as a result of a pre-bid conference¹ concerning this IFB, the Army decided to eliminate the inconsistency between the two IFB definitions of "drayage included" by making the definition of "drayage included" on page p-5 of the work statement controlling. To accomplish this, the Army added a "NOTE" (by IFB amendment No. 0003 dated October 29) to the bottom of the page on which Item No. 0004 was set forth. This note informed bidders that as to "any reference to drayage," bidders were to "refer to" paragraph 2.7, page p-5, of the IFB's work statement, in which it provided that "drayage included" did not apply to shipments to the contractor's warehouse for on-ward shipment by another freight-forwarder.²

Paragon filed a timely, pre-bid opening protest with the Army in which it contended that the Army's "NOTE" did not eliminate the initial conflict between the two IFB definitions of "drayage included." After this protest to

¹At the pre-bid conference, the conflicting definitions of "drayage included" were apparently brought to the Army's attention, and the contracting officer recognized the need to eliminate the conflict.

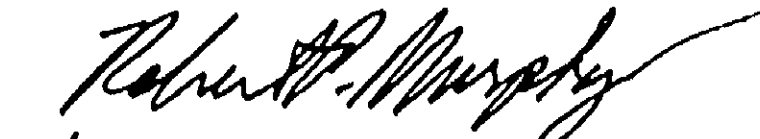
²The Army points out that the current edition of the DFARS (effective December 31, 1991,) now defines "drayage included" and "drayage not included" as those terms are defined in paragraph 2.7, page p-5 of the IFB's work statement. See DFARS § 252.247-7019(a) (1991 ed.).

the Army was denied, Paragon filed this protest with our Office. Paragon reiterates its contention that the Army's addition of the "NOTE" does not remedy the conflict between the two IFB definitions.³

An IFB must contain sufficient information to allow bidders to compete on an equal basis; an ambiguity exists where two or more reasonable interpretations of an IFB are possible. Telemarc, Inc., B-242339, Apr. 15, 1991, 91-1 CPD ¶ 375.

We agree that the "NOTE" added by amendment to the page of the IFB on which Item No. 0004 appeared was intended to, and did sufficiently make clear, that the controlling definition of "drayage included" was that found on page p-5 of the work statement, and that the conflicting IFB definition, as found in the 1988 edition of DFARS at § 52.247-7113, which has since been superseded, was not to be followed. The use of the words "any reference to drayage, refer to [page p-5 of the work statement]" was sufficient to place bidders on notice that the definition of "drayage included" found on page p-5 was controlling. Paragon's argument is without merit.

The protest is denied.


for James F. Hinchman
General Counsel

³Paragon also argues that ambiguity concerning the meaning of the term "drayage" ultimately caused the Army to allow the 1990 contractor for these same services an additional \$530,000 during performance of the 1990 contract for hauling from the residence to the contractor's warehouse. However, any protest concerning the award of the 1990 contract is clearly untimely now under our Bid Protest Regulations. Furthermore, to the extent that Paragon is questioning the administration of the 1990 contract, this ground of protest is not for our review. See 4 C.F.R. § 21.3(m)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).